

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NEXTDOOR.COM, INC.,

No. C-12-5667 EMC

Plaintiff,

v.

**ORDER REGARDING DISCOVERY
HEARING**

RAJ ABHYANKER,

Defendant.

On December 1, 2014, this Court issued an order vacating the December 3, 2014, hearing of Defendant Abhyanker's pending Motion to Preserve Confidentiality Designations on Enumerated Documents Pursuant to Protective Order and its accompanying Administrative Motion to File Under Seal. *See* Docket No. 412 (Court's Order); Docket No. 355 (Defendant's Motions). The Court further indicated it would decide these motions on the merits, rather than Magistrate Judge Cousins, to whom the motions had previously been referred. Docket No. 412.

The Court issued its Order out of concern that with trial fast approaching,¹ it would be an inefficient use of judicial resources for Judge Cousins to decide issues (such as whether documents likely to be admitted as trial exhibits could be filed under seal) that this Court might be asked to decide for itself at trial. Upon further consideration of Defendant's motions, however, the Court is convinced that there would be no such inefficiencies. Defendant's Motion to Preserve Confidentiality Designations on Enumerated Documents Pursuant to Protective Order involves

¹ A bench trial is currently scheduled to begin December 8, 2014.

1 issues and a legal standard which are distinct from the question whether documents that might be
2 introduced at trial should be sealed. So does Abhyanker's Administrative Motion to File Documents
3 Under Seal that he filed along with his discovery motion.

4 As Judge Koh explained in *Apple, Inc. v. Samsung Electronics Co., Ltd.*, No. 11-CV-01846-
5 LHK, 2012 WL 2913669, at *1 (N.D. Cal. Jul. 17, 2012), the Ninth Circuit applies two different
6 standards to requests to seal judicial records. Where, as here, a party seeks to seal records attached
7 to non-dispositive motions, the Ninth Circuit applies a "good cause" standard. *Id.* But those "who
8 seek to maintain the secrecy of documents attached to dispositive motions" or documents to be used
9 at trial, "must meet the high threshold showing that *compelling reasons* support secrecy." *Id.*
10 (quoting *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1177 (9th Cir. 2006) (emphasis
11 added) (internal quotation marks omitted)). This is because "the resolution of a dispute on the
12 merits, whether by trial or summary judgment, is at the heart of the interest in ensuring the public's
13 understanding of the judicial process and of significant public events." *Id.* (quoting *Kamakana*, 447
14 F.3d at 1177). Hence, courts in this District have held that "the presumption of openness will apply
15 to all documents [introduced at trial] and only documents of *exceptionally sensitive information* that
16 truly deserve protection will be allowed to be redacted or kept from the public." *Id.* at *2 (emphasis
17 added); *see also Oracle America v. Google, Inc.*, 10-CV-03561-WHA, at ECF No. 540 (noting that
18 the "United States district court is a public institution, and the workings of litigation must be open to
19 public view" and therefore holding that "unless [motions to seal] identify a limited amount of
20 exceptionally sensitive information that truly deserves protection, the motions will be denied
21 outright").

22 Defendant's motion to seal, filed at Docket No. 355, seeks to keep secret documents attached
23 to a non-dispositive motion. Thus, the "good cause" standard (as well as that set forth in Local Rule
24 79-5) will apply to Defendant's request. *See Apple*, 2012 WL 2913669 at *1. But "[n]early all of
25 the documents which [meet] the lower, 'good cause' standard [will] not meet the higher, 'compelling
26 reasons' standard for trial." *Id.* at *2. Thus, any determination that Judge Cousins might make
27 when deciding Defendant's current motion to seal will not be dispositive to any determination this
28 Court might be called to make under the more stringent sealing standard at trial.

